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In re: Schmidt et al. : DECISION ON REQUEST
Serial No: 08/836,369 : FOR RETROACTIVE LICENSE
Filed: December 20, 1997 : UNDER 37 CFR 5.25
Docket#: RSG 8379 US

Title: TEMPERATURE MEASUREMENT INSTRUMENT WITH DIFFRACTIVE OPTICS

This is in response to the petition filed on February 17, 1999 for a retroactive license.

- (a) A petition for a retroactive license under 35 U.S.C. 184 shall be presented in accordance with § 5.13 or § 5.14(a), and shall include:
- (1) A listing of each of the foreign countries in which the unlicensed patent application material was filed.
 - (2) The dates on which the material was filed in each country,
 - (3) A verified statement (oath or declaration) containing:
 - (i) An averment that the subject matter in question was not under a secrecy order at the time it was filed abroad, and that it is not currently under a secrecy order,
 - (ii) A showing that the license has been diligently sought after discovery of the proscribed foreign filing, and
 - (iii) An explanation of why the material was filed abroad through error and without deceptive intent without the required license under § 5.11 first having been obtained, and
 - (4) The required fee set forth in § 1.17(h)).

The petition is Denied at this time in that the petition is defective in that the requirements set forth in 37 C.F.R. 5.25(a)(3)(ii) has not been satisfied.

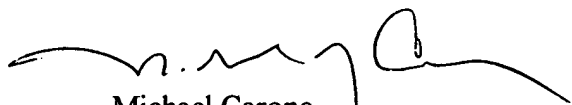
DECISION

The petition is denied in that it lacks sufficient evidence to conclude a finding of error and

diligence.

The petition is lacking supporting affidavits and/or evidence from the person or persons having first hand knowledge of the filings to support the conclusion of error. A statement including the persons knowledge of the inventorship at the time of the filing would appear sufficient. Additionally, the petition is lacking supporting facts, which would lead one to the conclusion of diligence. Supporting documentation would include an approximate date on which the discovery of the error occurred as well as events leading up to the filing of the instant application.

Accordingly, the provisions of 37 CFR 5.25 not having been fully met, the petition is denied, and in the absence of any response within **60 days** of the mailing date of this letter, such denial will be made final and the final action under 35 U.S.C. 185 will be taken. Extensions of time may be had under 37 C.F.R. 1.136(a).

A handwritten signature in black ink, appearing to read 'Michael Carone', with a stylized flourish extending to the right.

Michael Carone
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